

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWARD HARRIS,

Petitioner,

V.

WASHINGTON STATE PENITENTIARY,

Respondent.

CASE NO. 3:19-cv-05991-RJB-JRC

ORDER TO SHOW CAUSE AND
FILE AMENDED PROPOSED
PETITION

This case has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4.

Petitioner filed a proposed § 2241 habeas petition and an application to proceed *in forma pauperis* (“IFP”). Dkts. 1, 3. Petitioner states in his IFP application that he cannot pay the \$5.00 filing fee because of his legal financial obligations, cost of incarceration, and crime victim compensation expenses. *See* Dkt. 3, at 2. However, petitioner also states that he has a \$121.00 net monthly salary. Dkt. 3, at 1. And petitioner’s prison trust account statement reflects an average spendable balance of \$80.14 for the most recent period. *See* Dkt. 3, at 3. Petitioner’s trust account statement further indicates that his gross monthly income is over \$200.00 and that,

1 at least for October 2019, his legal financial obligations, cost of incarceration, and crime victim
2 compensation expenses totaled about \$80.00. Dkt. 3, at 4. Because it appears that petitioner
3 may have funds sufficient to pay the \$5.00 filing fee, he should do so or provide the Court with
4 an explanation of why he cannot.

5 Additionally, petitioner has filed a petition under “28 USC 2241” (emphasis removed),
6 but a petition filed under 28 U.S.C. § 2254—not § 2241—is appropriate when a “person in
7 custody pursuant to the judgment of a state court” seeks relief. *See Dominguez v. Kernan*, 906
8 F.3d 1127, 1134 (9th Cir. 2018) (internal citation and quotations omitted). Here, petitioner says
9 that he is imprisoned for life without the possibility of parole pursuant to a state court conviction
10 for first-degree assault, so that proceeding under § 2254 appears appropriate. *See* Dkt. 1-1, at 1;
11 *see also* *Dominguez*, 906 F.3d at 1137 (explaining that to decide if a petition should be brought
12 under § 2254, “[w]hat matters is that the custody complained of is attributable in some way to
13 the underlying state court judgment.”).

14 If petitioner intends to pursue a habeas action attacking the validity of his confinement
15 related to his first-degree assault conviction, then he must file an amended petition complying with
16 Rule 2 of the Rules Governing Section 2254 Cases on the form provided by the Court or explain
17 why a § 2241 petition, not a § 2254 petition, is appropriate. The amended petition must also be
18 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should contain
19 the same case number, and it may not incorporate any part of the original petition by reference.
20 The amended petition will act as a complete substitute for the original petition, and not as a
21 supplement.

22 A § 2254 petition should also name the state officer who has custody over petitioner as the
23 respondent—for instance, the superintendent of petitioner’s institution. *See* Rule 2(a) of the Rules
24

1 || Governing Section 2254 Cases. Petitioner should not name Washington State Penitentiary,
2 || which is not the appropriate respondent.

3 Accordingly, petitioner is ordered to provide an updated proposed habeas petition and to
4 show cause why his IFP application should not be denied on or before **December 20, 2019**. In
5 the alternative, petitioner may pay the \$5.00 filing fee before that date and provide the court with
6 an amended petition. Failure to show cause or to pay the amount and to provide an amended
7 petition shall be deemed a failure to properly prosecute this matter, and the Court will
8 recommend dismissal of this matter.

9 The Clerk's Office shall provide petitioner with the form for a § 2254 habeas petition.

10 Dated this 22nd day of November, 2019.


J. Richard Creature
United States Magistrate Judge